APPENDIX 3

ENABLING LEGISLATION

Zoning is a legislative power residing in the State, which has been delegated to cities, towns and counties. Article 7, Chapter 22, Title 15.2 of the Code of Virginia sets forth the legislation which enables Fairfax County to legislate zoning.

For the convenience of the reader, Article 7, Zoning, as well as other pertinent portions of Articles of Title 15.2, Chapter 22, entitled Planning, Subdivision of Land and Zoning, are presented herein. A portion of Chapter 1, Title 15.2 is also set out. The legislation presented is as amended through the 2002 Session of the General Assembly.

TITLE 15.2

CHAPTER 1
General Provisions

§ 15.2-107. Advertisement and enactment of certain fees and levies. — All levies and fees imposed or increased by a locality pursuant to the provisions of Chapters 21 (§ 15.2-2100 et seq.) or 22 (§ 15.2-2200 et seq.) of this title shall be advertised. The advertising requirements of § 15.2-1427 B shall apply with the necessary changes. Such levies, fees and increases shall be enacted by ordinance following the public hearing.

The advertisement shall include the following:

1. The time, date, and place of the public hearing.
2. The actual dollar amount or percentage change, if any, of the proposed levy, fee or increase.
3. A specific reference to the Code of Virginia section or other legal authority granting the legal authority for enactment of such proposed levy, fee, or increase.
4. A designation of the place or places where the complete ordinance, and information concerning the documentation and justification for the proposed fee, levy or increase are available for examination by the public no later than the time of the first publication.

No ordinance which imposes or increases levies and fees pursuant to Chapters 21 and 22 of this title shall be adopted unless fourteen days have elapsed following the last required publication of intention to propose the ordinance for passage.

Any emergency ordinance which imposes or increases a levy or fee shall be enforced for no more than sixty days unless reenacted in conformity with the provisions of this section.

§ 15.2-107.1. Advertisement of legal notices on web sites. — In addition to any requirements that a locality advertise legal notices in a newspaper having a general circulation in the locality, such notices may also be published on the locality's World Wide Web site.

CHAPTER 22
Planning, Subdivision of Land and Zoning

ARTICLE 1
General Provisions

§ 15.2-2200. Declaration of legislative intent. — This chapter is intended to encourage localities to improve the public health, safety, convenience and welfare of its citizens and to plan for the future development of communities to the end that transportation systems be carefully planned; that new community

centers be developed with adequate highway, utility, health, educational, and recreational facilities; that the need for mineral resources and the needs of agriculture, industry and business be recognized in future growth; that residential areas be provided with healthy surroundings for family life; that agricultural and forestal land be preserved; and that the growth of the community be consonant with the efficient and economical use of public funds.

§ 15.2-2201. Definitions. — As used in this chapter, unless the context requires a different meaning:

"*Affordable housing*" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"*Conditional zoning*" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"*Development*" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any property which will be principally devoted to agricultural production.

"*Historic area*" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"*Incentive zoning*" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features or amenities desired by the locality within the development.

"*Local planning commission*" means a municipal planning commission or a county planning commission.

"*Mixed use development*" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"*Official map*" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"*Planned unit development*" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"*Plat of subdivision*" means the schematic representation of land divided or to be divided.

"*Site plan*" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"*Special exception*" means a special use that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"*Street*" means highway, street, avenue, boulevard, road, lane, alley, or any public way. "*Subdivision*," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or

building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.

"*Variance*" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done. It shall not include a change in use which change shall be accomplished by a rezoning or by a conditional zoning.

"*Zoning*" or "*to zone*" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

§ 15.2-2204. Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments.

A. Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than five days nor more than twenty-one days after the second advertisement appears in such newspaper. The local planning commission and governing body may hold a joint public hearing after public notice as set forth hereinabove. If a joint hearing is held, then public notice as set forth above need be given only by the governing body. The term "*two successive weeks*" as used in this paragraph shall mean that such notice shall be published at least twice in such newspaper with not less than six days elapsing between the first and second publication. After enactment of any plan, ordinance or amendment, further publication thereof shall not be required.

B. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of twenty-five or fewer parcels of land, then, in addition to the advertising as above required, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be remailed. Costs of any notice required under this chapter shall be taxed to the applicant.

When a proposed amendment of the zoning ordinance involves a change in the zoning map classification

of more than twenty-five parcels of land, or a change to the applicable zoning ordinance text regulations that decreases the allowed dwelling unit density of more than twenty-five parcels of land, then, in addition to the advertising as above required, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved, provided, however, that written notice of such changes to zoning ordinance text regulations shall not have to be mailed to the owner, owners, or their agent of lots shown on a subdivision plat approved and recorded pursuant to the provisions of Article 6 (§ 15.2-2240 et seq.) of this chapter where such lots are less than 11,500 square feet. One notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that a representative of the local commission shall make affidavit that such mailings have been made and file such affidavit with the papers in the case. Nothing in this subsection shall be construed as to invalidate any subsequently adopted amendment or ordinance because of the inadvertent failure by the representative of the local commission to give written notice to the owner, owners or their agent of any parcel involved.

The governing body may provide that, in the case of a condominium or a cooperative, the written notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in lieu of each individual unit owner.

Whenever the notices required hereby are sent by an agency, department or division of the local governing body, or their representative, such notices may be sent by first class mail; however, a representative of such agency, department or division shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.

A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required shall waive the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required by this section.

C. When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map classification; or an application for special exception for a change in use or to increase by greater than fifty percent of the bulk or height of an existing or proposed building, but not including renewals of previously approved special exceptions, involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written notification as above required, written notice shall also be given by the local commission, or its representative, at least ten days before the hearing to the chief administrative officer, or his designee, of such adjoining locality.

D. The adoption or amendment prior to July 1, 1996, of any plan or ordinance under the authority of prior acts shall not be declared invalid by reason of a failure to advertise or give notice as may be required by such act or by this chapter, provided a public hearing was conducted by the governing body prior to such adoption or amendment. Every action contesting a decision of the locality based on a failure to advertise or give notice as may be required by this chapter shall be filed within thirty days of such decision with the circuit court having jurisdiction of the land affected by the decision. However, any litigation pending prior to July 1, 1996, shall not be affected by the 1996 amendment to this section.

E. Notwithstanding any contrary provision of law, general or special, any city with a population between 200,000 and 210,000 which is required by this title or by its charter to publish a notice, may cause such notice to be published in any newspaper of general circulation in the city.

§ 15.2-2205. Additional notice of planning or zoning matters. — Any locality may give, in addition to any specific notice required by law, notice by direct mail or any other means of any planning or zoning matter it deems appropriate.

§ 15.2-2206. When locality may require applicant to give notice; how given. — Any locality may by ordinance require that a person applying to the local governing body, local planning commission or board of

zoning appeals pursuant to this chapter be responsible for all required notices. The locality shall require that notice be given as provided by § 15.2-2204.

The locality may provide that, in the case of a condominium or of a cooperative, the written notice may be mailed to the unit owners' association or proprietary lessee's association, respectively, in lieu of each individual unit owner.

The applicant may rely upon records of the local real estate assessor's office to ascertain the names of persons entitled to notice.

A certification of notice and a listing of the persons to whom notice has been sent shall be supplied by the applicant as required by the local governing body at least five days prior to the first hearing.

The governing body shall allow any person entitled to notice to waive such right in writing.

Nothing herein shall be construed so as to affect the validity of any ordinance or amendment adopted prior to July 1, 1992.

§ 15.2-2208. Restraining violations of chapter. — Any violation or attempted violation of this chapter, or of any regulation adopted hereunder may be restrained, corrected, or abated as the case may be by injunction or other appropriate proceeding.

§ 15.2-2209. Civil penalties for violations of zoning ordinance. — Notwithstanding provision 5 of § 15.2-2286, any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the zoning ordinance. The schedule of offenses shall not include any zoning violation resulting in injury to any persons, and the existence of a civil penalty shall not preclude action by the zoning administrator under provision 4 of § 15.2-2286 or action by the governing body under § 15.2-2208.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than $100 for the initial summons and not more than $150 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any ten-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of $3,000. Designation of a particular zoning ordinance violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor.

The zoning administrator or his deputy may issue a civil summons as provided by law for a scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

No provision herein shall be construed to allow the imposition of civil penalties (i) for activities related to land development or (ii) for violation of any provision of a local zoning ordinance relating to the posting of signs on public property or public rights-of-way.

TITLE 15.2

CHAPTER 22
Planning, Subdivision of Land and Zoning

ARTICLE 2
Local Planning Commissions

§ 15.2-2210. Creation of local planning commissions; participation in planning district commissions or joint local commissions. — Every locality shall by resolution or ordinance create a local planning commission in order to promote the orderly development of the locality and its environs. In accomplishing the objectives of § 15.2-2200 the local planning commissions shall serve primarily in an advisory capacity to the governing bodies.

Any locality may participate in a planning district commission in accordance with Chapter 42 (§ 15.2-4200 et seq.) of this title or a joint local commission in accordance with § 15.2-2219.

§ 15.2-2211. Cooperation of local planning commissions and other agencies. — The planning commission of any locality may cooperate with local planning commissions or legislative and administrative bodies and officials of other localities so as to coordinate planning and development among the localities. Planning commissions may appoint committees and may adopt rules as needed to affect such cooperation. Planning commissions may also cooperate with state and federal officials, departments and agencies. Planning commissions may request from such departments and agencies, and such departments and agencies of the Commonwealth shall furnish, such reasonable information which may affect the planning and development of the locality.

§ 15.2-2212. Qualifications, appointment, removal, terms and compensation of members of local planning commissions. — A local planning commission shall consist of not less than five nor more than fifteen members, appointed by the governing body, all of whom shall be residents of the locality, qualified by knowledge and experience to make decisions on questions of community growth and development; provided, that at least one-half of the members so appointed shall be owners of real property. The local governing body may require each member of the commission to take an oath of office.

One member of the commission may be a member of the governing body of the locality, and one member may be a member of the administrative branch of government of the locality. The term of each of these two members shall be coextensive with the term of office to which he has been elected or appointed, unless the governing body, at the first regular meeting each year, appoints others to serve as their representatives. The remaining members of the commission first appointed shall serve respectively for terms of one year, two years, three years, and four years, divided equally or as nearly equal as possible between the membership. Subsequent appointments shall be for terms of four years each. The local governing bodies may establish different terms of office for initial and subsequent appointments including terms of office that are concurrent with those of the appointing governing body. Vacancies shall be filled by appointment for the unexpired term only. Members may be removed for malfeasance in office.

The local governing body may provide for compensation to commission members for their services, reimbursement for actual expenses incurred, or both.

§ 15.2-2213. Advisory members. — A member of a local planning commission may, with the consent of both governing bodies, serve as an advisory member of the local planning commission of a contiguous locality.

§ 15.2-2214. Meetings. — The local planning commission shall fix the time for holding regular meetings. Commissions shall meet at least every two months. However, in any locality with a population of not more than 7,500, the commission shall be required to meet at least once each year.

Special meetings of the commission may be called by the chairman or by two members upon written request to the secretary. The secretary shall mail to all members, at least five days in advance of a special meeting, a written notice fixing the time and place of the meeting and the purpose thereof.

Written notice of a special meeting is not required if the time of the special meeting has been fixed at a regular meeting, or if all members are present at the special meeting or file a written waiver of notice.

§ 15.1-2215. Quorum majority vote. — A majority of the members shall constitute a quorum and no action of the local planning commission shall be valid unless authorized by a majority vote of those present and voting.

§ 15.2-2216. Facilities for holding of meetings and preservation of documents; appropriations for expenses. — The governing body may provide the local planning commission with facilities for the holding of meetings and the preservation of plans, maps, documents and accounts, and may appropriate funds needed to defray the expenses of the commission.

§ 15.2-2217. Officers, employees and consultants; expenditures; rules and records; special surveys. — The local planning commission shall elect from the appointed members a chairman and a vice-chairman, whose terms shall be for one year. If authorized by the governing body the commission may (i) create and fill such other offices as it deems necessary; (ii) appoint such employees and staff as it deems necessary for its work; and (iii) contract with consultants for such services as it requires. The expenditures of the commission, exclusive of gifts or grants, shall be within the amounts appropriated for such purpose by the governing body.

The commission shall adopt rules for the transaction of business and shall keep a record of its transactions which shall be a public record. Upon request of the commission, the governing body or other public officials may, from time to time, for the purpose of special surveys under the direction of the commission, assign or detail to it any members of the staffs of county or municipal administrative departments, or such governing body or other public official may direct any such department employee to make for the commission special surveys or studies requested by the local commission.

§ 15.2-2221. Duties of commissions. — To effectuate this chapter, the local planning commission shall:

1. Exercise general supervision of, and make regulations for, the administration of its affairs;
2. Prescribe rules pertaining to its investigations and hearings;
3. Supervise its fiscal affairs and responsibilities, under rules and regulations as prescribed by the governing body;
4. Keep a complete record of its proceedings; and be responsible for the custody and preservation of its papers and documents;
5. Make recommendations and an annual report to the governing body concerning the operation of the commission and the status of planning within its jurisdiction;
6. Prepare, publish and distribute reports, ordinances and other material relating to its activities;
7. Prepare and submit an annual budget in the manner prescribed by the governing body of the county or municipality; and
8. If deemed advisable, establish an advisory committee or committees.

§ 15.2-2222. Expenditures; gifts and donations. — The local planning commission may expend, under regular local procedure as provided by law, sums appropriated to it for its purposes and activities.

A locality may accept gifts and donations for commission purposes. Any moneys so accepted shall be deposited with the appropriate governing body in a special nonreverting commission fund to be available for expenditure by the commission for the purpose designated by the donor. The disbursing officer of the locality may issue warrants against such special fund only upon vouchers signed by the chairman and the secretary of the commission.

TITLE 15.2

CHAPTER 22
Planning, Subdivision of Land and Zoning

ARTICLE 3
The Comprehensive Plan

§ 15.2-2223. Comprehensive plan to be prepared and adopted; scope and purpose. — The local planning commission shall prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction and every governing body shall adopt a comprehensive plan for the territory under its jurisdiction.

In the preparation of a comprehensive plan the commission shall make careful and comprehensive surveys and studies of the existing conditions and trends of growth, and of the probable future requirements of its territory and inhabitants. The comprehensive plan shall be made with the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants.

The comprehensive plan shall be general in nature, in that it shall designate the general or approximate location, character, and extent of each feature shown on the plan and shall indicate where existing lands or facilities are proposed to be extended, widened, removed, relocated, vacated, narrowed, abandoned, or changed in use as the case may be.

The plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the locality's long-range recommendations for the general development of the territory covered by the plan. It may include, but need not be limited to:

1. The designation of areas for various types of public and private development and use, such as different kinds of residential, business, industrial, agricultural, mineral resources, conservation, recreation, public service, flood plain and drainage, and other areas;
2. The designation of a system of transportation facilities such as streets, roads, highways, parkways, railways, bridges, viaducts, waterways, airports, ports, terminals, and other like facilities;
3. The designation of a system of community service facilities such as parks, forests, schools, playgrounds, public buildings and institutions, hospitals, community centers, waterworks, sewage disposal or waste disposal areas, and the like;
4. The designation of historical areas and areas for urban renewal or other treatment;
5. The designation of areas for the implementation of reasonable ground water protection measures;
6. An official map, a capital improvements program, a subdivision ordinance, a zoning ordinance and zoning district maps, mineral resource district maps and agricultural and forestal district maps, where applicable;
7. The location of existing or proposed recycling centers; and
8. The designation of areas for the implementation of measures to promote the construction and maintenance of affordable housing, sufficient to meet the current and future needs of residents of all levels of

income in the locality while considering the current and future needs of the planning district within which the locality is situated.

§ 15.2-2232 Legal status of plan.

A. Whenever a local planning commission recommends a comprehensive plan or part thereof for the locality and such plan has been approved and adopted by the governing body, it shall control the general or approximate location, character and extent of each feature shown on the plan. Thereafter, unless a feature is already shown on the adopted master plan or part thereof or is deemed so under subsection D, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than railroad facility, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination the commission may, and at the direction of the governing body shall, hold a public hearing, after notice as required by § 15.2-2204.

B. The commission shall communicate its findings to the governing body, indicating its approval or disapproval with written reasons therefor. The governing body may overrule the action of the commission by a vote of a majority of its membership. Failure of the commission to act within sixty days of a submission, unless the time is extended by the governing body, shall be deemed approval. The owner or owners or their agents may appeal the decision of the commission to the governing body within ten days after the decision of the commission. The appeal shall be by written petition to the governing body setting forth the reasons for the appeal. The appeal shall be heard and determined within sixty days from its filing. A majority vote of the governing body shall overrule the commission.

C. Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless involving a change in location or extent of a street or public area.

D. Any public area, facility or use as set forth in subsection A which is identified within, but not the entire subject of, a submission under either § 15.2-2258 for subdivision or provision 8 of § 15.2-2286 for development or both may be deemed a feature already shown on the adopted master plan, and, therefore, excepted from the requirement for submittal to and approval by the commission or the governing body; provided, that the governing body has by ordinance or resolution defined standards governing the construction, establishment or authorization of such public area, facility or use or has approved it through acceptance of a proffer made pursuant to § 15.2-2303.

E. Approval and funding of a public telecommunications facility by the Virginia Public Broadcasting Board pursuant to Article 12 (§ 2.2-2426 et seq.) of Chapter 24 of Title 2.2 shall be deemed to satisfy the requirements of this section and local zoning ordinances with respect to such facility with the exception of television and radio towers and structures not necessary to house electronic apparatus. The exemption provided for in this subsection shall not apply to facilities existing or approved by the Virginia Public Telecommunications Board prior to July 1, 1990. The Virginia Public Broadcasting Board shall notify the governing body of the locality in advance of any meeting where approval of any such facility shall be acted upon.

F. On any application for a telecommunications facility, the commission's decision shall comply with the requirements of the Federal Telecommunications Act of 1996. Failure of the commission to act on any such application for a telecommunications facility under subsection A submitted on or after July 1, 1998, within ninety days of such submission shall be deemed approval of the application by the commission unless the governing body has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The governing body may extend the time required for action by the local commission by no more than sixty additional days. If the commission has not acted on the application by the end of the

extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the commission.

TITLE 15.2

CHAPTER 22
Planning, Subdivision of Land and Zoning

ARTICLE 7
Zoning

§ 15.2-2280. Zoning ordinances generally. — Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;
2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;
3. The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or
4. The excavation or mining of soil or other natural resources.

§ 15.2-2281. Jurisdiction of localities. — For the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorporated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.

§ 15.2-2282. Regulations to be uniform. — All zoning regulations shall be uniform for each class or kind of buildings and uses throughout each district, but the regulations in one district may differ from those in other districts.

§ 15.2-2283. Purpose of zoning ordinances. — Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.2-2200. To these ends, such ordinances shall be designed to give reasonable consideration to each of the following purposes, where applicable: (i) to provide for adequate light, air, convenience of access, and safety from fire, flood, crime and other dangers; (ii) to reduce or prevent congestion in the public streets; (iii) to facilitate the creation of a convenient, attractive and harmonious community; (iv) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; (v) to protect against destruction of or encroachment upon historic areas; (vi) to protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic or other dangers; (vii) to encourage economic development activities that provide desirable employment and enlarge the tax base; (viii) to provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment; (ix) to protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities; and (x) to promote the creation and preservation of affordable housing suitable for

meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated. Such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water as defined in § 62.1-255.

§ 15.2-2284. Matters to be considered in drawing and applying zoning ordinances and districts. — Zoning ordinances and districts shall be drawn and applied with reasonable consideration for the existing use and character of property, the comprehensive plan, the suitability of property for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies, the transportation requirements of the community, the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services, the conservation of natural resources, the preservation of flood plains, the preservation of agricultural and forestal land, the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the locality.

§ 15.2-2285. Preparation and adoption of zoning ordinance and map and amendments thereto; appeal.

A. The planning commission of each locality may, and at the direction of the governing body shall, prepare a proposed zoning ordinance including a map or maps showing the division of the territory into districts and a text setting forth the regulations applying in each district. The commission shall hold at least one public hearing on a proposed ordinance or any amendment of an ordinance, after notice as required by § 15.2-2204, and may make appropriate changes in the proposed ordinance or amendment as a result of the hearing. Upon the completion of its work, the commission shall present the proposed ordinance or amendment including the district maps to the governing body together with its recommendations and appropriate explanatory materials.

B. No zoning ordinance shall be amended or reenacted unless the governing body has referred the proposed amendment or reenactment to the local planning commission for its recommendations. Failure of the commission to report 100 days after the first meeting of the commission after the proposed amendment or reenactment has been referred to the commission, or such shorter period as may be prescribed by the governing body, shall be deemed approval, unless the proposed amendment or reenactment has been withdrawn by the applicant prior to the expiration of the time period. In the event of and upon such withdrawal, processing of the proposed amendment or reenactment shall cease without further action as otherwise would be required by this subsection.

C. Before approving and adopting any zoning ordinance or amendment thereof, the governing body shall hold at least one public hearing thereon, pursuant to public notice as required by § 15.2-2204, after which the governing body may make appropriate changes or corrections in the ordinance or proposed amendment. In the case of a proposed amendment to the zoning map, the public notice shall state the general usage and density range of the proposed amendment and the general usage and density range, if any, set forth in the applicable part of the comprehensive plan. However, no land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice required by § 15.2-2204. Zoning ordinances shall be enacted in the same manner as all other ordinances.

D. Any county which has adopted an urban county executive form of government provided for under Chapter 8 (§ 15.2-800 et seq.) may provide by ordinance for use of plans, profiles, elevations, and other such demonstrative materials in the presentation of requests for amendments to the zoning ordinance.

E. The adoption or amendment prior to March 1, 1968, of any plan or ordinance under the authority of prior acts shall not be declared invalid by reason of a failure to advertise, give notice or conduct more than one public hearing as may be required by such act or by this chapter, provided a public hearing was conducted by the governing body prior to the adoption or amendment.

F. Every action contesting a decision of the local governing body adopting or failing to adopt a proposed zoning ordinance or amendment thereto or granting or failing to grant a special exception shall be filed within thirty days of the decision with the circuit court having jurisdiction of the land affected by the decision. However, nothing in this subsection shall be construed to create any new right to contest the action of a local governing body.

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes. —

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any district.

2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.

3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing.

The governing body or the board of zoning appeals of any city with a population between 260,000 and 264,000 may impose a condition upon any special exception relating to retail alcoholic beverage control licensees which provides that such special exception will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility or upon the passage of a specific period of time.

The governing body of any city with a population between 200,000 and 210,000 may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307. Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of less than thirty days, but not less than ten days, for a notice of violation involving temporary or seasonal commercial uses, parking of commercial trucks in residential zoning districts, or similar short-term, recurring violations.

Where provided by ordinance, the zoning administrator may be authorized to grant a variance from any building setback requirement contained in the zoning ordinance if the administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be

changed by the granting of the variance. Prior to the granting of a variance, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for variance, and an opportunity to respond to the request within twenty-one days of the date of the notice. If any adjoining property owner objects to said request in writing within the time specified above, the request shall be transferred to the Board of Zoning Appeals for decision.

The zoning administrator shall respond within ninety days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period.

5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not less than $10 nor more than $1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than $10 nor more than $1,000, and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period punishable by a fine of not less than $100 nor more than $1,500.

6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices and other expenses incident to the administration of a zoning ordinance or to the filing or processing of any appeal or amendment thereto.

7. For the amendment of the regulations or district maps from time to time, or for their repeal. Whenever the public necessity, convenience, general welfare, or good zoning practice require, the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated (i) by resolution of the governing body, (ii) by motion of the local planning commission, or (iii) by petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed zoning map amendment, addressed to the governing body or the local planning commission, who shall forward such petition to the governing body; however, the ordinance may provide for the consideration of proposed amendments only at specified intervals of time, and may further provide that substantially the same petition will not be reconsidered within a specific period, not exceeding one year. Any such resolution or motion by such governing body or commission proposing the rezoning shall state the above public purposes therefor.

In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed twelve months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both. In the event of and upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

8. For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

9. For areas and districts designated for mixed use developments or planned unit developments as defined in § 15.2-2201.

10. For the administration of incentive zoning as defined in § 15.2-2201.

11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the higher zoning classification. The locality may establish reasonable guidelines for determining the amount of excess real estate tax collected and the method and duration for applying the tax credit. For purposes of this section, "downzoning" means a zoning action by a locality that results in a reduction in a formerly permitted land use intensity or density.

12. Provisions for the clustering of single-family dwellings so as to preserve open space.

a. A locality may, at its option, provide in its zoning or subdivision ordinance standards, conditions and criteria for clustering of single-family dwellings and the preservation of open space developments. In establishing such standards, conditions and criteria, the governing body may, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space and compliance with its comprehensive plan and land use ordinances. The density calculation of the cluster development shall be based upon the same criteria for the property as would otherwise be permitted by applicable land use ordinances. As a locality determines, at its option, to provide for clustering of single-family dwellings and the preservation of open space developments, it may vary provisions for such developments for each different zoning area within the locality.

If proposals for clustering of single-family dwellings and the preservation of open space developments comply with the locality's adopted standards, conditions and criteria, the development and open space preservation shall be permitted by right under the local subdivision ordinance. The implementation and approval of the cluster development and open space preservation shall be done administratively by the locality's staff and without a public hearing. No local ordinance shall require that a special exception, special use, or conditional use permit be obtained for such developments. However, any such ordinance may exempt developments of two acres or less from the provisions of this subdivision.

b. Additionally, in any zoning or subdivision ordinance adopted pursuant to subdivision A 12, a locality may, at its option, provide for the clustering of single-family dwellings and the preservation of open space at a density calculation greater than the density permitted in the applicable land use ordinance. To implement and approve such increased density development, the locality may, at its option, (i) establish and provide in its zoning or subdivision ordinance standards, conditions, and criteria for such development, and if the proposed development complies with those standards, conditions and criteria, it shall be permitted by right and approved administratively by the locality staff in the same manner provided in subdivision A 12 a, or (ii) approve the increased density development upon approval of a special exception, special use permit, conditional use permit or rezoning.

c. Any locality that provides for clustering of single-family dwellings and preservation of open space upon approval of a special exception, special use permit, conditional use permit or rezoning shall no later than July 1, 2004, amend its applicable land use ordinance to comply with the provisions of subdivision A 12. Any land use provisions for clustering of single-family dwellings and preservation of open space adopted after the effective date of this act shall comply with subdivision A 12. Notwithstanding any of the requirements of subdivision A 12 to the contrary, any local government land use ordinance in affect as of January 1, 2002, that provides for the clustering of single-family dwellings and preservation of open space development by right without requiring either a special exception, special use permit, conditional use permit or other discretionary approval may remain in effect at the option of the locality.

B. Prior to the initiation of an application for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes owed to the locality which have been properly assessed against the subject property have been paid.

§ 15.2-2287. Localities may require oath regarding property interest of local officials. — A zoning ordinance may provide that petitions brought by property owners, contract purchasers or the agents thereof, shall be sworn to under oath before a notary public or other official before whom oaths may be taken, stating whether or not any member of the local planning commission or governing body has any interest in such property, either individually, by ownership of stock in a corporation owning such land, partnership, as the beneficiary of a trust, or the settlor of a revocable trust or whether a member of the immediate household of any member of the planning commission or governing body has any such interest.

APPENDIX 3-ENABLING LEGISLATION

§ 15.2-2288. Localities may not require a special use permit for certain agricultural activities. — A zoning ordinance shall not require that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. For the purposes of this section, production agriculture and silviculture is the bona fide production or harvesting of agricultural or silviculture products but shall not include the processing of agricultural or silviculture products or the above ground application or storage of sewage sludge. However, localities may adopt setback requirements, minimum area requirements and other requirements that apply to land used for agriculture or silviculture activity within the locality that is zoned as an agricultural district or classification.

§ 15.2-2288.1. Localities may not require a special use permit for certain residential uses. — No local ordinance shall require as a condition of approval of a subdivision plat, site plan, or plan of development, or issuance of a building permit, that a special exception, special use, or conditional use permit be obtained for the development and construction of residential dwellings at the use, height and density permitted by right under the local zoning ordinance. Nothing herein shall restrict the use of the special exception, special use, or conditional use permit process on application of a property owner for (i) a cluster or town center as an optional form of residential development at a density greater than that permitted by right, or otherwise permitted by local ordinance; (ii) use in an area designated for steep slope mountain development; (iii) use as a utility facility to serve a residential development; or (iv) nonresidential uses including but not limited to home businesses, home occupations, day care centers, bed and breakfast inns, lodging houses, private boarding schools, and shelters established for the purpose of providing human services to the occupants thereof.

§ 15.2-2289. Localities may provide by ordinance for disclosure of real parties in interest. — In addition to the powers granted by this chapter, localities may provide by ordinance that the local planning commission, governing body or zoning appeals board may require any applicant for a special exception, or a special use permit, amendment to the zoning ordinance or variance to make complete disclosure of the equitable ownership of the real estate to be affected including, in the case of corporate ownership, the name of stockholders, officers and directors and in any case the names and addresses of all of the real parties of interest. However the requirement of listing names of stockholders, officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders.

§ 15.2-2290. Uniform regulations for manufactured housing.

A. Localities adopting and enforcing zoning ordinances under the provisions of this article shall provide that, in all agricultural zoning districts or districts having similar classifications regardless of name or designation where agricultural, horticultural, or forest uses such as but not limited to those described in § 58.1-3230 are the dominant use, the placement of manufactured houses that are on a permanent foundation and on individual lots shall be permitted, subject to development standards that are equivalent to those applicable to site-built single family dwellings within the same or equivalent zoning district.

B. Localities adopting and enforcing zoning regulations under the provisions of this article may, to provide for the general purposes of zoning ordinances, adopt uniform standards, so long as they apply to all residential structures erected within the agricultural zoning district or other districts identified in subsection A of this section incorporating such standards. The standards shall not have the effect of excluding manufactured housing.

C. Local zoning ordinances adopting provisions consistent with this section shall not relieve lots or parcels from the obligations relating to manufactured housing units imposed by the terms of a restrictive covenant.

§ 15.2-2291. Group homes of eight or fewer single-family residence.

A. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "*residential facility*" means any group home or other residential facility for which the Department of Mental Health, Mental Retardation and Substance Abuse Services is the licensing authority pursuant to this Code.

B. Zoning ordinances in counties having adopted the county manager plan of government and any county with a population between 55,800 and 57,000 for all purposes shall consider a residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

C. Zoning ordinances in any city with a population between 60,000 and 70,000 for all purposes shall consider a residential facility in which no more than four aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

§ 15.2-2292. Zoning provisions for family day homes.

A. Zoning ordinances for all purposes shall consider a family day home as defined in § 63.2-100 serving one through five children, exclusive of the provider's own children and any children who reside in the home as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed upon such a home. Nothing in this section shall apply to any county or city which is subject to § 15.2-741 or § 15.2-914.

B. A local governing body may by ordinance allow a zoning administrator to use an administrative process to issue zoning permits for a family day home as defined in § 63.2-100 serving six through twelve children, exclusive of the provider's own children and any children who reside in the home. The ordinance may contain such standards as the local governing body deems appropriate and shall include a requirement that notification be sent by registered or certified letter to the last known address of each adjacent property owner. If the zoning administrator receives no written objection from a person so notified within thirty days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator may issue the permit sought. The ordinance shall provide a process whereby an applicant for a family day home that is denied a permit through the administrative process may request that its application be considered after a hearing following public notice as provided in § 15.2-2204. The provisions of this subsection shall not prohibit a local governing body from exercising its authority, if at all, under provision 3 of § 15.2-2286.

§ 15.2-2293. Airspace subject to zoning ordinances.

A. A zoning ordinance shall be applicable to the superjacent airspace of any nonpublic-owned land area.

B. Airspace superjacent or subjacent to any public highway, street, lane, alley or other way in this Commonwealth not required for the purpose of travel, or other public use, by the Commonwealth or other

political jurisdiction owning it, shall be subject to the zoning ordinance of the locality in which the airspace is located.

C. Airspace not provided for in subsection B herein that is superjacent to any land owned by the Commonwealth or other political jurisdiction and occupied by a nonpolitical entity or person shall be subject to the zoning ordinance that would be applicable if the land were owned by a private person.

§ 15.2-2293.1. Placement of amateur radio antennas. — Any ordinance involving the placement, screening or height of antennas shall reasonably accommodate amateur radio antennas and shall impose the minimum regulation necessary to accomplish the locality's legitimate purpose. In localities having a population density of 120 persons or less per square mile according to the 1990 United States census, no local ordinance shall (i) restrict amateur radio antenna height to less than 200 feet above ground level as permitted by the Federal Communications Commission or (ii) restrict the number of support structures. In localities having a population density of more than 120 persons per square mile according to the 1990 United States census, no local ordinance shall (i) restrict amateur radio antenna height to less than 75 feet above ground level or (ii) restrict the number of support structures. Reasonable and customary engineering practices shall be followed in the erection of amateur radio antennas. This section shall not preclude any locality, by ordinance, from regulating amateur radio antennas with regard to reasonable requirements relating to the use of screening, setback, placement, and health and safety requirements.

§ 15.2-2294. Airport safety zoning. — Every locality (i) in whose jurisdiction a licensed airport or United States government or military air facility is located or (ii) over whose jurisdiction the approach slopes and other safety zones of a licensed airport, including United States government or military air facility extend shall, by ordinance, provide for the regulation of the height of structures and natural growth for the purpose of protecting the safety of air navigation and the public investment in air navigation facilities. The ordinance may be adopted regardless of whether the local governing body has adopted a zoning ordinance applicable to other land uses in the locality. The ordinance may be designed and adopted by the locality as an overlay zone superimposed on any preexisting base zone.

The provisions of the airport safety zoning ordinance shall be in compliance with the rules of the Virginia Aviation Board.

§ 15.2-2295. Aircraft noise attenuation features in buildings and structures within airport noise zones. — Any locality in whose jurisdiction, or adjacent jurisdiction, is located a licensed airport or United States government or military air facility, may enforce building regulations relating to the provision or installation of acoustical treatment measures in residential buildings and structures, or portions thereof, other than farm structures, for which building permits are issued after January 1, 2003, in areas affected by above average noise levels from aircraft due to their proximity to flight operations at nearby airports. In establishing the regulations, the locality may adopt one or more noise overlay zones as an amendment to its zoning map and may establish different measures to be provided or installed within each zone, taking into account the severity of the impact of aircraft noise upon buildings and structures within each zone. Any such regulations or amendments to a zoning map shall provide a process for reasonable notice to affected property owners. Any regulations or amendments to a zoning map shall be adopted in accordance with this chapter. A statement shall be placed on all recorded surveys, subdivision plats and all final site plans approved after January 1, 2003, giving notice that a parcel of real property either partially or wholly lies within an airport noise overlay zone. No existing use of property which is affected by the adoption of such regulations or amendments to a zoning map shall be considered a nonconforming use solely because of the regulations or amendments. The provisions of this section shall not affect any local aircraft noise attenuation regulations or ordinances adopted prior to the effective date of this act, and such regulations and ordinances may be amended provided the amendments shall not alter building materials, construction methods, plan submission requirements or inspection practices specified in the Virginia Uniform Statewide Building Code.

§ 15.2-2295.1. Regulation of mountain ridge construction.

A. As used in this section, unless the context requires a different meaning:

"*Construction"* means the building, alteration, repair, or improvement of any building or structure.

"*Crest"* means the uppermost line of a mountain or chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations.

"*Protected mountain ridge"* means a ridge with (i) an elevation of 2,000 feet or more and (ii) an elevation of 500 feet or more above the elevation of an adjacent valley floor.

"Ridge" means the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.

"Tall buildings or structures" means any building, structure or unit within a multi-unit building with a vertical height of more than forty feet measured from the top of the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge to the uppermost point of the building, structure or unit. "Tall buildings or structures" do not include (i) water, radio, telecommunications or television towers or any equipment for the transmission of electricity, telephone or cable television; (ii) structures of a relatively slender nature and minor vertical projections of a parent building, including, but not limited to, chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires or windmills; or (iii) any building or structure designated as a historic landmark, building or structure by the United States or by the Board of Historic Resources.

B. Determinations by the governing body of heights and elevations under this section shall be conclusive.

C. Any locality in which a protected mountain ridge is located may, by ordinance, provide for the regulation of the height and location of tall buildings or structures on protected mountain ridges. The ordinance may be designed and adopted by the locality as an overlay zone superimposed on any preexisting base zone.

D. An ordinance adopted under this section may include criteria for the granting or denial of permits for the construction of tall buildings or structures on protected mountain ridges. Any such ordinance shall provide that permit applications shall be denied if a permit application fails to provide for (i) adequate sewerage, water, and drainage facilities, including, but not limited to, facilities for drinking water and the adequate supply of water for fire protection and (ii) compliance with the Erosion and Sediment Control Law (**§** 10.1-560 et seq.).

E. Any locality that adopts an ordinance providing for the regulation of the height and location of tall buildings or structures on protected mountain ridges shall send a copy of the ordinance to the Secretary of Natural Resources.

F. Nothing in this section shall be construed to affect or impair a governing body's authority under this chapter to define and regulate uses in any existing zoning district or to adopt overlay districts regulating uses on mountainous areas as defined by the governing body.

§ 15.2-2296. Conditional zoning; declaration of legislative policy and findings; purpose. — It is the general policy of the Commonwealth in accordance with the provisions of **§** 15.2-2283 to provide for the orderly development of land, for all purposes, through zoning and other land development legislation. Frequently, where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptable zoning methods are needed to permit differing land uses and the same time to recognize effects of change. It is the purpose of **§§** 15.2-2296 through 15.2-2300 to provide a more flexible and adaptable zoning method to cope with situations found in such zones through conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned. The exercise of authority granted pursuant to **§§** 15.2-2296 through

15.2-2302 shall not be construed to limit or restrict powers otherwise granted to any locality, nor to affect the validity of any ordinance adopted by any such locality which would be valid without regard to this section. The provisions of this section and the following six sections shall not be used for the purpose of discrimination in housing.

§ 15.2-2297. Same; conditions as part of a rezoning or amendment to zoning map.

A. A zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map; provided that (i) the rezoning itself must give rise for the need for the conditions; (ii) the conditions shall have a reasonable relation to the rezoning; (iii) the conditions shall not include a cash contribution to the locality; (iv) the conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in § 15.2-2241; (v) the conditions shall not include a requirement that the applicant create a property owners' association under Chapter 26 (§ 55-508 et seq.) of Title 55 which includes an express further condition that members of a property owners' association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments and other public facilities not otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation; (vi) the conditions shall not include payment for or construction of off-site improvements except those provided for in § 15.2-2241; (vii) no condition shall be proffered that is not related to the physical development or physical operation of the property; and (viii) all such conditions shall be in conformity with the comprehensive plan as defined in § 15.2-2223. Once proffered and accepted as part of an amendment to the zoning ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions. However, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendments to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. The notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property.

Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no rights pursuant to this section.

D. The provisions of subsections B and C of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

Nothing in this section shall be construed to affect or impair the authority of a governing body to:

1. Accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or

2. Accept or impose valid conditions pursuant to provision 3 of § 15.2-2286 or other provision of law.

§ 15.2-2298. Same; additional conditions as a part of rezoning or zoning map amendment in certain high-growth localities.

A. Except for those localities to which § 15.2-2303 is applicable, this section shall apply to (i) any locality which has had population growth of ten percent or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census; (ii) any city adjoining such city or county; (iii) any towns located within such county; and (iv) any county contiguous with at least three such counties, and any town located in that county.

In any such locality, notwithstanding any contrary provisions of § 15.2-2297, a zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map, provided that (i) the rezoning itself gives rise to the need for the conditions; (ii) the conditions have a reasonable relation to the rezoning; and (iii) all conditions are in conformity with the comprehensive plan as defined in § 15.2-2223. Reasonable conditions shall not include, however, conditions that impose upon the applicant the requirement to create a property owners' association under Chapter 26 (§ 55-508 et seq.) of Title 55 which includes an express further condition that members of a property association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments, and other public facilities not otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation. Once proffered and accepted as part of an amendment to the zoning ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions; however, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

No proffer shall be accepted by a locality unless it has adopted a capital improvement program pursuant to § 15.2-2239 or local charter. In the event proffered conditions include the dedication of real property or payment of cash, the property shall not transfer and the payment of cash shall not be made until the facilities for which the property is dedicated or cash is tendered are included in the capital improvement program, provided that nothing herein shall prevent a locality from accepting proffered conditions which are not normally included in a capital improvement program. If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of the property or cash payment in the event the property or cash payment is not used for the purpose for which proffered.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to the property, shall be effective with respect to the property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. The notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B above, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no rights pursuant to this section.

D. The provisions of subsections B and C of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

Nothing in this section shall be construed to affect or impair the authority of a governing body to:

1. Accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or

2. Accept or impose valid conditions pursuant to provision 3 of **§** 15.2-2286 or other provision of law.

§ 15.2-2299. Same; enforcement and guarantees. — The zoning administrator is vested with all necessary authority on behalf of the governing body of the locality to administer and enforce conditions attached to a rezoning or amendment to a zoning map, including (i) the ordering in writing of the remedy of any noncompliance with the conditions; (ii) the bringing of legal action to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and (iii) requiring a guarantee, satisfactory to the governing body, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the governing body, or agent thereof, upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.

§ 15.2-2300. Same; records. — The zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The zoning administrator shall keep in his office and make available for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone.

§ 15.2-2301. Same; petition for review of decision. — Any zoning applicant or any other person who is aggrieved by a decision of the zoning administrator made pursuant to the provisions of **§** 15.2-2299 may petition the governing body for review of the decision of the zoning administrator. All petitions for review shall be filed with the zoning administrator and with the clerk of the governing body within thirty days from the date of the decision for which review is sought and shall specify the grounds upon which the petitioner is aggrieved.

§ 15.2-2302. Same; amendments and variations of conditions. — There shall be no amendment or variation of conditions created pursuant to the provisions of § 15.2-2297 until after a public hearing before the governing body advertised pursuant to the provisions of § 15.2-2204.

§15.2-2303. Conditional zoning in certain localities.

A. A zoning ordinance may include reasonable regulations and provisions for conditional zoning as defined in § 15.2-2201 and for the adoption, in counties, or towns therein which have planning commissions, wherein the urban county executive form of government is in effect, or in a city adjacent to or completely surrounded by such a county, or in a county contiguous to any such county, or in a city adjacent to or completely surrounded by such a contiguous county, or in any town within such contiguous county, and in the counties east of the Chesapeake Bay as a part of an amendment to the zoning map of reasonable conditions, in addition to the regulations provided for the zoning district by the ordinance, when such conditions shall have been proffered in writing, in advance of the public hearing before the governing body required by § 15.2-2285 by the owner of the property which is the subject of the proposed zoning map amendment. Reasonable conditions shall not include, however, conditions that impose upon the applicant the requirement to create a property owners' association under Chapter 26 (§ 55-508 et seq.) of Title 55 which includes an express further condition that members of a property owners' association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments, and other public facilities not otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation. Once proffered and accepted as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by such conditions. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subdivision shall acquire no rights pursuant to this section.

D. Subsections B and C of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10,

1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

E. Nothing in this section shall be construed to affect or impair the authority of a governing body to (i) accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or (ii) accept or impose valid conditions pursuant to provision 3 of § 15.2-2286, provision 5 of § 15.2-2242, or other provision of law.

F. In addition to the powers granted by the preceding subsections, a zoning ordinance may include reasonable regulations to implement, in whole or in part, the provisions of §§ 15.2-2296 through 15.2-2302.

§ 15.2-2303.1. Development agreements in certain counties.

§ 15.2-2303.2. Disclosure of proffered cash payments and expenditures.

A. The governing body of any locality accepting a cash payment voluntarily proffered pursuant to §§ 15.2-2298, 15.2-2303 or § 15.2-2303.1 shall by September 30, 2001, report to the Commission on Local Government the following information for the preceding two fiscal years, concluding with fiscal year 2001:

1. The aggregate amount of proffered cash payments collected by the locality;

2. The aggregate amount of proffered cash payments that have been pledged to but not collected by the locality and which pledges are not conditioned on any event other than time; and

3. The aggregate amount of proffered cash payments expended by the locality, and an aggregate list of all public improvements on which such money was expended.

B. The governing body of any locality eligible to accept any proffered cash payments pursuant to §§ 15.2-2298, 15.2-2303 or § 15.2-2303.1 but that did not accept any proffered cash payments during the preceding two fiscal years shall by September 30, 2001, so notify the Commission on Local Government.

C. The governing body of any locality accepting a cash payment voluntarily proffered pursuant to §§ 15.2-2298, 15.2-2303 or § 15.2-2303.1 shall within three months of the close of each fiscal year, beginning in fiscal year 2002 and for each fiscal year thereafter, report to the Commission on Local Government the following information for the preceding fiscal year:

1. The aggregate amount of proffered cash payments collected by the locality;

2. The aggregate amount of proffered cash payments that have been pledged to but not collected by the locality and which pledges are not conditioned on any event other than time; and

3. The aggregate amount of proffered cash payments expended by the locality, and an aggregate list of all public improvements on which such money was expended.

D. The governing body of any locality eligible to accept any proffered cash payments pursuant to §§ 15.2-2298, 15.2-2303 or § 15.2-2303.1 but that did not accept any proffered cash payments during the preceding fiscal year shall within three months of the close of each fiscal year, beginning in 2001 and for each fiscal year thereafter, so notify the Commission on Local Government.

E. The Commission on Local Government shall, by November 30, 2001, prepare and make available to the public and the chairmen of the Senate Local Government Committee and the House Counties, Cities and Towns Committee a report containing the information made available to it pursuant to subsections A and B.

F. The Commission on Local Government shall by November 30, 2001, and by November 30 of each fiscal year thereafter, prepare and make available to the public and the chairmen of the Senate Local Government Committee and the House Counties, Cities and Towns Committee an annual report containing the information made available to it pursuant to subsections C and D.

§ 15.2-2304. Affordable dwelling unit ordinances in certain counties. — In furtherance of the purpose of providing affordable shelter for all residents of the Commonwealth, the governing bodies of counties where the urban county executive form of government is in effect, may by amendment to the zoning ordinances of such county provide for an affordable housing dwelling unit program. The program shall

address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of moderately priced housing by providing for optional increases in density in order to reduce land costs for such moderately priced housing.

Any local ordinance of any other locality providing optional increases in density for provision of low and moderate income housing adopted before December 31, 1988, shall continue in full force and effect.

§ 15.2-2305. Affordable dwelling unit ordinances.

A. In furtherance of the purpose of providing affordable shelter for all residents of the Commonwealth, the governing body of any county, other than a county organized under the urban county executive form of government, city or town may by amendment to the zoning ordinances of such locality provide for an affordable housing dwelling unit program. Such program shall address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of moderately priced housing by providing for optional increases in density in order to reduce land costs for such moderately priced housing. Any local ordinance of any locality providing optional increases in density for provision of low and moderate income housing adopted before December 31, 1988, shall continue in full force and effect. Any local ordinance may authorize the governing body to (i) establish qualifying jurisdiction-wide affordable dwelling unit sales prices based on local market conditions, (ii) establish jurisdiction-wide affordable dwelling unit qualifying income guidelines, and (iii) offer incentives other than density increases, such as reductions or waiver of permit, development, and infrastructure fees, as the governing body deems appropriate to encourage the provision of affordable housing. Counties organized under the urban county executive form of government shall be governed by the provisions of § 15.2-2304 for purposes of the adoption of an affordable dwelling unit ordinance.

B. A zoning ordinance establishing an affordable housing dwelling unit program may include, among other things, reasonable regulations and provisions as to any or all of the following:

1. For a definition of affordable housing and affordable dwelling units.

2. For application of the requirements of an affordable housing dwelling unit program to any site, as defined by the locality, or a portion thereof at one location which is the subject of an application for rezoning or special exception or, at the discretion of the local governing body, site plan or subdivision plat which yields, as submitted by the applicant, fifty or more dwelling units at an equivalent density greater than one unit per acre and which is located within an approved sewer area.

3. For an increase of up to twenty percent in the developable density of each site subject to the ordinance and for a provision requiring up to twelve and one-half percent of the total units approved, including the optional density increase, to be affordable dwelling units, as defined in the ordinance. In the event a twenty percent increase is not achieved, the percentage of affordable dwelling units required shall maintain the same ratio of twenty percent to twelve and one-half percent.

4. For increases by up to twenty percent of the density or of the lower and upper end of the density range set forth in the comprehensive plan of such locality applicable to rezoning and special exception applications that request approval of single family detached dwelling units or single family attached dwelling units, when such applications are approved after the effective date of a local affordable housing zoning ordinance amendment.

5. For a requirement that not less than twelve and one-half percent of the total number of dwelling units approved pursuant to a zoning ordinance amendment enacted pursuant to subdivision B 4 of this section shall be affordable dwelling units, as defined by the local zoning ordinance unless reduced by the twenty to twelve and one-half percent ratio pursuant to subdivision B 3 of this section.

6. For increases by up to ten percent of the density or of the lower and upper end of the density range, whichever is appropriate, set forth in the comprehensive plan of such locality applicable to rezoning and special exception or, at the discretion of the local governing body, site plan and subdivision plat applications that request approval of nonelevator multiple family dwelling unit structures four stories or less in height

when such applications are approved after the effective date of a local affordable housing zoning ordinance. However, at the option of the applicant, the provision pursuant to subdivision B 4 shall apply.

7. For a requirement that not less than six and one-quarter percent of the total number of dwelling units approved pursuant to a zoning ordinance amendment enacted pursuant to subdivision B 6 of this section shall be affordable dwelling units, as defined in the local zoning ordinance. In the event a ten percent increase is not achieved, the percentage of affordable dwelling units required shall maintain the same ratio of ten percent to six and one-quarter percent.

8. For reasonable regulations requiring the affordable dwelling units to be built and offered for sale or rental concurrently with the construction and certificate of occupancy of a reasonable proportion of the market rate units.

9. For standards of compliance with the provisions of an affordable housing dwelling unit program and for the authority of the local governing body or its designee to enforce compliance with such standards and impose reasonable penalties for noncompliance, provided that a local zoning ordinance provide for an appeal process for any party aggrieved by a decision of the local governing body.

C. Nothing contained in this section shall apply to any elevator structure four stories or above.

D. Any ordinance adopted hereunder shall provide that the local governing body shall have no more than 280 days in which to process site or subdivision plans proposing the development or construction of affordable housing or affordable dwelling units under such ordinance. The calculation of such period of review shall include only the time that plans are in review by the local governing body and shall not include such time as may be required for revision or modification in order to comply with lawful requirements set forth in applicable ordinances and regulations.

E. A locality establishing an affordable housing dwelling unit program in its zoning ordinance shall establish in its general ordinances, adopted in accordance with the requirements of § 15.2-1427 B, reasonable regulations and provisions as to any or all of the following:

1. For administration and regulation by a local housing authority or by the local governing body or its designee of the sale and rental of affordable units.

2. For a local housing authority or local governing body or its designee to have an exclusive right to purchase up to one-third of the for-sale affordable housing dwelling units within a development within ninety days of a dwelling unit being completed and ready for purchase, provided that the remaining two-thirds of such units be offered for sale exclusively for a ninety-day period to persons who meet the income criteria established by the local housing authority or local governing body or the latter's designee.

3. For a local housing authority or local governing body or its designee to have an exclusive right to lease up to a specified percentage of the rental affordable dwelling units within a development within a controlled period determined by the housing authority or local governing body or its designee, provided that the remaining for-rental affordable dwelling units within a development be offered to persons who meet the income criteria established by the local housing authority or local governing body or its designee.

4. For the establishment of jurisdiction-wide affordable dwelling unit sales prices by the local housing authority or local governing body or the latter's designee, initially and adjusted semiannually, based on a determination of all ordinary, necessary and reasonable costs required to construct the affordable dwelling unit prototype dwellings by private industry after considering written comment by the public, local housing authority or advisory body to the local governing body, and other information such as the area's current general market and economic conditions, provided that sales prices not include the cost of land, on-site sales commissions and marketing expenses, but may include, among other costs, builder-paid permanent mortgage placement costs and buy-down fees and closing costs except prepaid expenses required at settlement.

5. For the establishment of jurisdiction-wide affordable dwelling unit rental prices by a local housing authority or local governing body or its designee, initially and adjusted semiannually, based on a determination of all ordinary, necessary and reasonable costs required to construct and market the required number of affordable dwelling rental units by private industry in the area, after considering written comment by the

public, local housing authority, or advisory body to the local governing body, and other information such as the area's current general market and economic conditions.

6. For a requirement that the prices for resales and rerentals be controlled by the local housing authority or local governing body or designee for a period of fifty years after the initial sale or rental transaction for each affordable dwelling unit, provided that the ordinance further provide for reasonable rules and regulations to implement a price control provision.

7. For establishment of an affordable dwelling unit advisory board which shall, among other things, advise the jurisdiction on sales and rental prices of affordable dwelling units; advise the housing authority or local governing body or its designees on requests for modifications of the requirements of an affordable dwelling unit program; adopt regulations concerning its recommendations of sales and rental prices of affordable dwelling units; and adopt procedures concerning requests for modifications of an affordable housing dwelling unit program. Members of the board, to be ten in number and to be appointed by the governing body, shall be qualified as follows: two members shall be either civil engineers or architects, each of whom shall be registered or certified with the relevant agency of the Commonwealth, or planners, all of whom shall have extensive experience in practice in the locality; one member shall be a real estate salesperson or broker, licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1; one member shall be a representative of a lending institution which finances residential development in the locality; four members shall consist of a representative from a local housing authority or local governing body or its designee, a residential builder with extensive experience in producing single family detached and attached dwelling units, a residential builder with extensive experience in producing multiple-family dwelling units, and a representative from either the public works or planning department of the locality; one member may be a representative of a nonprofit housing organization which provides services in the locality; and one citizen of the locality. At least four members of the advisory board shall be employed in the locality.

8. The sales and rental price for affordable dwelling units within a development shall be established such that the owner/applicant shall not suffer economic loss as a result of providing the required affordable dwelling units. *"Economic loss"* for sales units means that result when the owner or applicant of a development fails to recoup the cost of construction and certain allowances as may be determined by the designee of the governing body for the affordable dwelling units, exclusive of the costs of land acquisition and cost voluntarily incurred but not authorized by the ordinance, upon the sale of an affordable dwelling unit.

§ 15.2-2306. Preservation of historical sites and architectural areas.

A. 1. Any locality may adopt an ordinance setting forth the historic landmarks within the locality as established by the Virginia Board of Historic Resources, and any other buildings or structures within the locality having an important historic, architectural, archaeological or cultural interest, any historic areas within the locality as defined by § 15.2-2201, and areas of unique architectural value located within designated conservation, rehabilitation or redevelopment districts, amending the existing zoning ordinance and delineating one or more historic districts, adjacent to such landmarks, buildings and structures, or encompassing such areas, or encompassing parcels of land contiguous to arterial streets or highways (as designated pursuant to Title 33.1, including § 33.1-41.1 of that title) found by the governing body to be significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures or districts therein or in a contiguous locality. An amendment of the zoning ordinance and the establishment of a district or districts shall be in accordance with the provisions of Article 7 (§ 15.2-2280 et seq.) of this chapter. The governing body may provide for a review board to administer the ordinance. The ordinance may include a provision that no building or structure, including signs, shall be erected, reconstructed, altered or restored within any such district unless approved by the review board or, on appeal, by the governing body of the locality as being architecturally compatible with the historic landmarks, buildings or structures therein.

2. Subject to the provisions of subdivision 3 of this subsection the governing body may provide in the ordinance that no historic landmark, building or structure within any district shall be razed, demolished or

moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board.

3. The governing body shall provide by ordinance for appeals to the circuit court for such locality from any final decision of the governing body pursuant to subdivisions 1 and 2 of this subsection and shall specify therein the parties entitled to appeal the decisions, which parties shall have the right to appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the action of the governing body, provided the petition is filed within thirty days after the final decision is rendered by the governing body. The filing of the petition shall stay the decision of the governing body pending the outcome of the appeal to the court, except that the filing of the petition shall not stay the decision of the governing body if the decision denies the right to raze or demolish a historic landmark, building or structure. The court may reverse or modify the decision of the governing body, in whole or in part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the governing body.

In addition to the right of appeal hereinabove set forth, the owner of a historic landmark, building or structure, the razing or demolition of which is subject to the provisions of subdivision 2 of this subsection, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure provided that: (i) he has applied to the governing body for such right, (ii) the owner has for the period of time set forth in the same schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell the landmark, building or structure, and the land pertaining thereto, to the locality or to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the landmark, building or structure and the land pertaining thereto, and (iii) no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from the decision of the governing body, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from shall not affect the right of the owner to make the bona fide offer to sell referred to above. No offer to sell shall be made more than one year after a final decision by the governing body, but thereafter the owner may renew his request to the governing body to approve the razing or demolition of the historic landmark, building or structure. The time schedule for offers to sell shall be as follows: three months when the offering price is less than $25,000; four months when the offering price is $25,000 or more but less than $40,000; five months when the offering price is $40,000 or more but less than $55,000; six months when the offering price is $55,000 or more but less than $75,000; seven months when the offering price is $75,000 or more but less than $90,000; and twelve months when the offering price is $90,000 or more.

4. The governing body is authorized to acquire in any legal manner any historic area, landmark, building or structure, land pertaining thereto, or any estate or interest therein which, in the opinion of the governing body should be acquired, preserved and maintained for the use, observation, education, pleasure and welfare of the people; provide for their renovation, preservation, maintenance, management and control as places of historic interest by a department of the locality or by a board, commission or agency specially established by ordinance for the purpose; charge or authorize the charging of compensation for the use thereof or admission thereto; lease, subject to such regulations as may be established by ordinance, any such area, property, lands or estate or interest therein so acquired upon the condition that the historic character of the area, landmark, building, structure or land shall be preserved and maintained; or to enter into contracts with any person, firm or corporation for the management, preservation, maintenance or operation of any such area, landmark, building, structure, land pertaining thereto or interest therein so acquired as a place of historic interest; however, the locality shall not use the right of condemnation under this subsection unless the historic value of such area, landmark, building, structure, land pertaining thereto, or estate or interest therein is about to be destroyed.

B. Notwithstanding any contrary provision of law, general or special, in the City of Portsmouth no approval of any governmental agency or review board shall be required for the construction of a ramp to serve the handicapped at any structure designated pursuant to the provisions of this section.

§ 15.2-2307. Vested rights not impaired; nonconforming uses. — Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

For purposes of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property.

A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of such buildings or structures shall conform to such regulations whenever they are enlarged, extended, reconstructed or structurally altered and may further provide that no nonconforming building or structure may be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming use.

Nothing in this section shall be construed to prevent removal of a valid nonconforming manufactured housing unit from property and replacement of that unit with another comparable manufactured housing unit that meets the current HUD manufactured housing code. Such replacement unit shall retain the valid nonconforming status of the prior unit.

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for a city having a population of more than 140,000 but less than 170,000 shall appoint at least one but not more

than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the board. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice.

E. Notwithstanding any contrary provisions of this section, in any city with a population greater than 390,000, members of the board shall be appointed by the governing body. The governing body of such city shall also appoint at least one but not more than three alternates to the board.

§ 15.2-2309. Powers and duties of board of zoning appeals. — Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision.

2. To authorize upon appeal or original application in specific cases such variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively

prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a dearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

No such variance shall be authorized by the board unless it finds:

a. That the strict application of the ordinance would produce undue hardship.

b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity, and

c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No variance shall be authorized except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-

class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

§ 15.2-2310. Applications for special exceptions and variances. — Applications for special exceptions and variances may be made by any property owner, tenant, government official, department, board or bureau. Applications shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board who shall place the matter on the docket to be acted upon by the board. No special exceptions or variances shall be authorized except after notice and hearing as required by § 15.2-2204. The zoning administrator shall also transmit a copy of the application to the local planning commission which may send a recommendation to the board or appear as a party at the hearing. Any locality may provide by ordinance that substantially the same application will not be considered by the board within a specified period, not exceeding one year.

§ 15.2-2311. Appeals to board.

A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article or any ordinance adopted pursuant thereto. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty days in accordance with this section, and that the decision shall be final and unappealable if not appealed within thirty days. The appeal period shall not commence until the statement is given. The appeal shall be taken within thirty days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after sixty days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The sixty-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical or other nondiscretionary errors.

§ 15.2-2312. Procedure on appeal. — The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and make its decision within ninety days of the filing of the application or appeal. In exercising its powers the board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the board shall be necessary to reverse any order,

requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to affect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

§ 15.2-2313. Proceedings to prevent construction of building in violation of zoning ordinance. — Where a building permit has been issued and the construction of the building for which the permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the board of zoning appeals.

§ 15.2-2314. Certiorari to review decision of board. — Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition specifying the grounds on which aggrieved within thirty days after the final decision in the office of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the board may request that the court hear the matter on the question of whether the appeal was frivolous.

§ 15.2-2315. Conflict with statutes, local ordinances or regulations. — Whenever the regulations made under authority of this article require a greater width or size of yards, courts or other open spaces, require a lower height of building or less number of stories, require a greater percentage of lot to be left unoccupied or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this article shall govern. Whenever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, require a lower height of building or a less number of stories, require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under authority of this article, the provisions of such statute or local ordinance or regulation shall govern.

§ 15.2-2316. Validation of zoning ordinances prior to 1971. — All proceedings had in the preparation, certification and adoption of zoning ordinances by every locality prior to January 1, 1971, which shall have been in substantial compliance with the provisions of this chapter are validated and confirmed, and all such zoning ordinances adopted or attempted to be adopted pursuant to the provisions of this chapter are declared to be validly adopted and enacted, notwithstanding any defects or irregularities in the adoption thereof.